IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8965 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARABHAI CHEMICALS

Versus

CHANDRAKANT A DHABALE

Appearance:

1. Special Civil Application No. 8965 of 1992

MR VIMAL PATEL for Petitioner

MRS DT SHAH for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 03/10/2002

ORAL JUDGEMENT

#. By filing this petition under Article 227 of the Constitution, the petitioner, i.e. Sarabhai M.Chemicals,

Vadodara, has challenged the legality of award dated July 16, 1992, rendered by the Labour Court, Vadodara, in Reference (LCV) No.69 of 1980, by which the petitioner-company is directed to reinstate the respondent on his original post with continuity in service along with all the accrued benefits as if he was in service and to pay 20% of the amount of backwages for the intervening period.

#. The respondent-workman was employed as a Laboratory Assistant in the petitioner-company since August 1, 1974, on probation. The period of probation was extended from time to time and he was made permanent on February 1, 1978. From August 19, 1979, the respondent stopped attending duties without intimating any reason. Therefore, the petitioner addressed a registered letter dated September 15, 1979, stating that the respondent was not attending his duties from August 19, 1979, without taking leave or permission or assigning any reason and that he should resume his duties on receipt of the letter and give explanation for his absence. Though the letter was duly received, the respondent did not give any explanation. Therefore, another letter dated October 4, 1979, was addressed by the petitioner-company to the respondent stating interalia that he was not attending his duties from August 19, 1979, and that no intimation about his leave, except ESI certificate indicating his sickness from September 11, 1979 to September 22, 1979, was received. By the said letter, the respondent was informed that in spite of letter dated September 15, 1979, he had not returned for duties even after the expiry of his ESI leave and therefore, he should submit his explanation in writing within three days of the receipt of the letter and show cause as to why action should not be taken against him for remaining absent without permission. The petitioner-company did not receive any reply from the respondent and therefore, addressed another registered letter dated October 17, 1979, stating that the respondent was not attending his duties from August 19, 1979, till the date of the letter and though explanation was asked for from him, vide letter dated October 4, 1979, no explanation was received. By the said letter, the respondent was informed that non reporting for duties and not offering explanation showed that he was not interested in serving the company. By the said letter, the respondent was again asked to submit his written explanation within seven days of the receipt of the letter and show cause as to why his name should not be discontinued from the Attendance Register. Even after receipt of the said letter, the respondent did not resume duties or offer any

explanation. Therefore, a registered letter dated November 24, 1979, was addressed by the petitioner-company to him stating that he was remaining absent from duties with effect from August 19, 1979, without taking leave from the Head of the Department and as he had failed to offer explanation though demanded by letters dated October 4, 1979, and October 17, 1989, it was reasonable to hold that he was not interested in serving the company. By the said letter, the respondent was informed that his name was discontinued from the Attendance Register from August 19, 1979, i.e. the date from which he had been remaining absent without permission.

#. On receipt of the letter dated November 24, 1979, the respondent raised a dispute challenging the legality of the order by which his services were terminated. His case was that he was pressurized to tender resignation and as he had not succumbed to the said pressure, his services were illegally terminated by the petitioner-company. On failure of conciliation proceedings, the dispute was referred to the Labour Court, Vadodara, for adjudication, where it was numbered as Reference (LCV) No.69 of 1980. The statement of claim was submitted by the respondent to which reply was filed by the petitioner-company at Ex.9. In support of his case, the respondent had examined himself at Ex.18.

#. On appreciation of oral and documentary evidence, the Labour Court held that it was proved that the workman had remained absent without any leave from August 19, 1979, till the date his name was removed from the Attendance Register, except for the period between September 11, 1979 to September 22, 1989. The Labour Court took note of the fact that as the respondent had remained absent from duty without leave, the petitioner-company had removed his name from the Attendance Register and had discharged him from services. What was concluded by the Labour Court was that according to the Standing Orders, as applicable to the petitioner-company, absence on the part of a workman would amount to misconduct for which, no departmental inquiry was held, and therefore, the action of the petitioner-company of removing name of the respondent from the Attendance Register was illegal. The Labour Court was of the opinion that the action of removing the name of the respondent from the Attendance Register amounted to retrenchment and as no retrenchment compensation was paid, the respondent was entitled to reinstatement in service.

#. On the question of backwages, the Labour Court noted

that the respondent was the owner of a chemical unit and had himself engaged six persons to work in the said unit and that after obtaining loan from GSFC, had hired a plot for establishing a factory in the year 1979. Moreover, it was also found by the Labour Court that the respondent was owning 25 acres of agricultural land in the State of Karnataka and that as per his own admission, he had stopped attending duties from August 19, 1979. The balance sheet/ profit and loss account statements of the factory produced by the respondent himself were taken into account which indicated that in the year 1982, the respondent had earned a profit to the tune of Rs.48,567=64, but in the previous years, he had suffered losses. On overall view of the matter, the Labour Court concluded that the respondent was entitled to 20% of the amount of backwages for the intervening period. Under the circumstances, by the impugned order, the Labour Court, Vadodara, has directed the petitioner to reinstate the respondent in service with 20% backwages giving rise to the present petition.

#. Mr.Vimal M.Patel, learned counsel for the petitioner, contended that having held that the respondent had willingly remained absent for a long period, the Labour Court should have upheld the action of the petitioner-company in removing the name of the respondent from Attendance Register and therefore, the impugned award should be set aside. It was claimed that having regard to the facts of the case as emerging from the record, no departmental inquiry could have been conducted by the petitioner-company and therefore, the finding recorded by the Labour Court, that without holding inquiry, the name of the respondent could not have been removed from the Attendance Register, deserves to be set aside. It was stressed that more than sufficient opportunity was given to the respondent to offer his explanation regarding his voluntary absenteeism from service, but the respondent failed to avail of the said opportunity and as such, the action of the petitioner-company of removing name of the respondent from the Attendance Register should have been upheld by the Labour Court. In the alternative, it was argued that the Labour Court itself conducted inquiry and found that the respondent, who was self-employed with his own flourishing business, had, in fact, abandoned the services and therefore, the labour Court was not justified in directing the petitioner-company to reinstate the respondent in service with 20% backwages. Elaborating the said submission, it was contended that the evidence of the respondent recorded before the Labour Court clearly establish that the respondent had willingly

remained absent from service for a period of more than three months and had abandoned the service and therefore, the action of removing his name from the Attendance Register should not have been held to be bad on the ground that no departmental inquiry was conducted or that before effecting retrenchment, no retrenchment compensation was paid. The learned counsel for the petitioner emphasized that the award of the Labour Court has ignored practical aspects of the matter and it being unjust, should be set aside.

#. Mrs.D.T.Shah, learned counsel for the respondent pleaded that the action of removing the name of the respondent from the Attendance Register on the ground that he had remained absent without leave is a misconduct within the meaning of the Standing Orders applicable to the petitioner-company and therefore, the Labour Court was justified in holding that the name of the respondent could not have been removed from the Attendance Register without holding a departmental inquiry. It was pleaded that the action of removing the name of the respondent from the Attendance Register amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act, 1947"), and as retrenchment compensation was not paid to the respondent, the Labour Court was justified in holding that retrenchment was illegal and that the respondent was entitled to be reinstated in service. What was emphasized was that the inquiry which was conducted before the Labour Court did not establish that the respondent had abandoned the service and therefore, the award of the Labour Court should be upheld by the Court.

#. I have considered the submissions advanced at the Bar and the documents forming part of the petition.

#. The fact that the respondent had remained absent from duties without leave from August 19, 1979, is not in dispute. It is also not in dispute that in spite of several opportunities having been given, the respondent could not offer any explanation regarding his absence from duties from August 19, 1979 onwards. There is no manner of doubt that the petitioner-company had removed the name of the respondent from the Attendance Register because the respondent remained absent from service without any leave. In the light of the Standing Orders which were produced before the Labour Court, the Labour Court was justified in holding that the action of removing the name of the workman from Attendance Register for remaining absent without any leave amounted to misconduct and that his name could not have been removed

without holding any departmental inquiry. However, it is relevant to notice that the petitioner-company in its written statement had contended that if the Labour Court came to the conclusion that the company had dismissed the workman from service and was bound to hold an inquiry, then the company should be given opportunity to lead evidence in that regard before the Labour Court. From the impugned award, it is also evident that the said request was accepted by the Labour Court and the Labour Court, on appreciation of evidence of the respondent, held that from the documentary evidence produced on record, it became clear that the workman had remained absent without any leave from August 19, 1979, till the date the company issued notice, except for the period between September 11, 1979 to September 22, 1979. The Labour Court found that the respondent-workman remained absent without any ground and wrongfully, and therefore, his name was removed from the Attendance Register. On analysis of the deposition of the respondent, the Labour Court found that the respondent is the owner of a chemical unit which is being run in the name of Prarthana Chemicals and that at the relevant time, the respondent had engaged six persons to work in the said unit. It was also found that the respondent had obtained a loan from GSFC and after hiring a plot, had established a factory in the year 1979. It was noticed by the Labour Court that the respondent had obtained a loan of Rs.81,000/= and the value of machinery installed in the factory was Rs.38,000/=. Further, it was found that the respondent was also owner of 25 acres of agricultural land situated in the State of Karnataka. What is relevant is that as per the finding recorded by the Labour Court, the respondent earned a profit of Rs.48,567=64 in the year 1982. This finding is based on the balance sheet / profit and loss account produced by the respondent himself of Prarthana Chemicals. Thus, the misconduct of remaining absent without leave stands proved by the evidence of the respondent himself and therefore, in my view, the Labour Court, Vadodara, was not justified in reinstating the respondent in service on the ground that there was absence of holding any departmental inquiry or that the provisions of Section 25F of the Act, 1947, were not complied with or that before effecting retrenchment, retrenchment compensation was not paid to the respondent. Mrs.D.T.Shah, learned counsel for the respondent could not explain the conduct of the respondent of remaining absent without leave or starting a chemical unit of his own and earning profit etc. The record would indicate that the respondent having set up his own chemical unit, was not interested in serving the petitioner-company and had therefore remained absent without any ground and that

too, wrongfully. Thus, the misconduct alleged stands proved by the evidence of the respondent himself and his reinstatement in service with 20% backwages could not have been ordered. Once it is found that the petitioner-company had reserved liberty to lead evidence to prove misconduct of the respondent and that misconduct stands proved by the evidence of the respondent himself, the impugned award becomes liable to be set aside.

#. For the foregoing reasons, the petition succeeds. The award dated July 16, 1992, rendered by the Labour Court, Vadodara, in Reference (LCV) No.69 of 1980, directing the petitioner-company to reinstate the respondent-workman in service, with 20% backwages, is hereby set aside and quashed. Rule is made absolute with no order as to costs.

(J.M.Panchal, J.)

(sunil)